

ASSEMBLY BILL

No. 2210

Introduced by Assembly Member Fuentes

February 18, 2010

An act to add Section 633.8 to the Penal Code, relating to interception of communications.

LEGISLATIVE COUNSEL'S DIGEST

AB 2210, as introduced, Fuentes. Intercepted communications: hostage taking and barricading.

Existing law prohibits a person from intentionally eavesdropping or recording a confidential communication by means of any electronic amplifying device or recording device without the consent of all parties to the communication. Under existing law, specified law enforcement agents may make a written application to a judge to authorize the interception of a wire, electronic pager, or electronic cellular telephone communication. In certain instances the application can be made informally and granted orally if an emergency situation exists, as specified.

This bill would authorize a peace officer who is authorized by a county district attorney or the Attorney General to authorize the use of an electronic amplifying or recording device to eavesdrop on or record, or both, any communication in an emergency situation involving the taking of hostages or the barricading of a location if the peace officer has probable cause to believe an emergency situation exists that requires communications be intercepted before an order authorizing the interception can be obtained. This bill would require a written application to be made seeking to authorize the interception within 48 hours.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 633.8 is added to the Penal Code, to read:
2 633.8. (a) It is the intent of the Legislature in enacting this
3 section to provide law enforcement with the ability to use electronic
4 amplifying or recording devices to eavesdrop and record the
5 otherwise confidential oral communications of individuals within
6 a location when responding to an emergency situation that involves
7 the taking of a hostage or the barricading of a location. It is the
8 intent of the Legislature that intercepting communications pursuant
9 to this section comply with paragraph (7) of Section 2518 of Title
10 18 of the United States Code authorizing communication
11 interceptions in emergency situations.
12 (b) Notwithstanding the provisions of this chapter, and in
13 accordance with federal law, a designated peace officer described
14 in subdivision (c) may use, or authorize the use of, an electronic
15 amplifying or recording device to eavesdrop on or record, or both,
16 any communication within a particular location in response to an
17 emergency situation involving the taking of a hostage or hostages
18 or the barricading of a location if the designated peace officer
19 determines both of the following:
20 (1) There is probable cause to believe that an emergency
21 situation exists involving the immediate danger of death or serious
22 physical injury to any person, as defined in Section 2518(7)(a)(i)
23 of Title 18 of the United States Code.
24 (2) That the emergency situation requires that communications
25 be intercepted before an order authorizing the interception can,
26 with due diligence, be obtained.
27 (c) Only a peace officer who has been designated by either a
28 district attorney in the county where the emergency exists, or by
29 the Attorney General to make the necessary determinations
30 pursuant to paragraphs (1) and (2) of subdivision (b) may make
31 those determinations for purposes of this section.
32 (d) If the determination is made by a designated peace officer
33 described in subdivision (c) that an emergency situation exists, a
34 peace officer shall not be required to knock and announce his or

1 her presence before entering, installing, and using any electronic
2 amplifying or recording devices.

3 (e) If the determination is made by a designated peace officer
4 described in subdivision (c) that an emergency situation exists and
5 communications are intercepted, an application for an order
6 approving the interception shall be made within 48 hours of the
7 beginning of the interception and shall comply with the
8 requirements of Section 629.50.

9 (f) The contents of any oral communications intercepted
10 pursuant to this section shall be recorded on tape or wire or other
11 comparable device. The recording of the contents shall be done
12 so as to protect the recording from editing or other alterations. The
13 contents of the oral communications shall be provided to the judge
14 at the time an application is made pursuant to subdivision (e).

15 (g) For purposes of this section, a “barricading” occurs when a
16 person establishes an area from which others are excluded.

17 (h) A judge shall not grant an application made pursuant to this
18 section in anticipation that an emergency situation will arise. A
19 judge shall grant an application for an interception only if the peace
20 officer has fully complied with the requirements of this section.
21 If an application is granted pursuant to this section, an inventory
22 shall be served pursuant to Section 629.68.

23 (i) This section does not require that a peace officer designated
24 pursuant to subdivision (c) undergo training pursuant to Section
25 629.94.